**BEFORE THE PUBLIC UTILITIES COMMISSION**
**OF THE STATE OF CALIFORNIA**

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| Application of Pacific Gas and Electric Company for Adoption of Electric Revenue Requirements and Rates Associated with its 2017 Energy Resource Recovery Account (ERRA) and Generation Non-Bypassable Charges Forecast and Greenhouse Gas Forecast Revenue and Reconciliation (U 39 E). | ) | Application 16-06-003 (Filed June 1, 2016) |

# REPLY BRIEF OF MARIN CLEAN ENERGY

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# REPLY BRIEF OF MARIN CLEAN ENERGY

In accordance with the *Scoping Memo And Ruling Of Assigned Commissioner*, dated August 18, 2016 ("Scoping Memo"), and pursuant to the Rules of Practice and Procedure of the Public Utilities Commission of the State of California ("Commission"), Marin Clean Energy ("MCE") hereby submits this reply brief on matters relating to Pacific Gas and Electric Company's ("PG&E") forecasted Power Charge Indifference Adjustment ("PCIA") for 2017. MCE has attempted to conform its reply brief to the common briefing outline agreed to by the parties, however, a word of note is appropriate here. Since MCE provides this reply brief for the single purpose of addressing PG&E's arguments in support of retiring PG&E's negative indifference amount balance, other headings and sections of the common brief outline have been excluded from this reply brief.

## I. REPLY

### [VI. PG&E's Negative Indifference Amount Proposal]

In its opening brief, PG&E "explains why the [negative indifference account balance] should now be retired."[1] As further discussed below, PG&E's argument boils down to three points. First, PG&E claims that the $78 million in acknowledged benefit to bundled customers from retiring PG&E's negative indifference amount balance is essentially "chump change" that should be disregarded. This argument is as cavalier as it is disengaged from economic reality.

Second, PG&E essentially claims that, since MCE has no pre-2009 vintage customers, MCE has no standing to argue against the principle of PG&E's unprecedented proposal. This argument seeks to inappropriately marginalize MCE and its interests in the integrity of the PCIA, and is a red herring.

Third, PG&E claims that MCE's reliance on Decision ("D.")08-09-012 is misplaced. Yet, PG&E offers nothing in its opening brief to rebut or otherwise address the clear, enduring holdings of D.08-09-012. D.08-09-012 is as relevant now as it was during the existence of California Department of Water Resources ("DWR") contracts, and the express language of D.08-09-012 (ignored by PG&E in its opening brief) affirms this point.

Finally, noticeably absent from PG&E's opening brief is any recognition of the brouhaha occurring in the other investor-owned utilities' ("IOUs") respective Energy Resource Recovery Account ("ERRA") proceedings on a related matter. The Commission should consider arguments in the other IOUs' ERRA proceedings as it considers PG&E's request to eliminate its negative indifference amount balance.

### A. PG&E Acknowledges That Bundled Customers Would Be Better Off By PG&E's Proposal, In Contravention To The Bundled Customer Indifference Principle

[1] PG&E Opening Brief at 15.

As MCE stated in its opening brief, the Commission has repeatedly and unswervingly stated that the bundled customer indifference standard is a two-way street: "bundled customers should be no worse off, *nor should they be any better off* as a result of customers choosing alternative energy suppliers (ESP, CCA, POU or customer generation)."[2] The condition of being "better off" would violate the bundled customer indifference standard *but for* the fact that the IOUs have been directed to maintain negative indifference amount balances, carry these negative balances forward and eventually use the negative balances to offset positive balances, thereby resulting in bundled customer indifference.[3]

Importantly, in its opening brief PG&E unabashedly acknowledges that bundled customers, while also benefitting from "the vast majority" of PG&E's $1.13 billion negative indifference amount balance, have also benefitted by an additional $77.5 million from payments made by departing customers.[4] While admitting that bundled customers have been better off because of these payments, PG&E nevertheless summarily dismisses this issue because the amount ($77.5 million) is "substantially less" than one billion dollars.[5] PG&E's statement is completely divorced from economic reality. While $77.5 million may be "substantially less" than $1 billion, and may essentially be chump change to PG&E, this amount, if retired by PG&E

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2 MCE Opening Brief at 9 (citing D.08-09-012 at 10 (emphasis added)).

3 *See* MCE Opening Brief at 9 (referencing D.08-09-012 at 48 ("It is similarly necessary that negative indifference amounts be carried over for use in subsequent years to maintain bundled customer indifference.")). *See also* MCE Opening Brief at 9 (citing Senate Bill ("SB") 790 (emphasis added), which statutorily adopted this carry-over principle: "Estimated net unavoidable electricity costs paid by the customers of a community choice aggregator *shall be reduced* by the value of any benefits that remain with bundled service customers, unless the customers of the community choice aggregator are allocated a fair and equitable share of those benefits." (Pub. Util. Code § 366.2(g) (added by SB 790)).

4 *See* PG&E Opening Brief at 17.

5 *See* PG&E Opening Brief at 17.

to the benefit of its bundled customers, would clearly violate the Commission's bundled customer indifference standard insofar as it would allow bundled customers to be *permanently* better off as the result of the departure of customers. PG&E's failure to address this point is telling.

### B. PG&E's Attempt To Marginalize MCE Should Be Disregarded

In its opening brief, PG&E attempts to make much of the fact that "[n]one of the [direct access ("DA")] customer groups active in this proceeding have opposed the retirement of the negative indifference amount. Instead, the negative indifference amount retirement has only been opposed by CCAs, primarily MCE."[6] PG&E urges the Commission to regard this as "an important factor in the Commission's consideration of PG&E's request."[7] PG&E's statements should be disregarded.

Anecdotes and conjecture are irrelevant in determining the outcome of a contested issue; what matters are facts and law. PG&E seems to surmise that the DA parties have failed to oppose PG&E's proposal because they agree with it. This is conjecture and irrelevant. It would be equally persuasive, though equally irrelevant, to surmise that the DA parties' failure to expressly oppose PG&E's proposal is a tactical move to gain overall benefit in the DA parties' attempt to eliminate the PCIA on a statewide basis.[8] The point is this: why the DA parties did or did not address this issue in this proceeding is irrelevant. MCE has been actively involved on PCIA matters for years, to say the least, and it is not unsurprising or noteworthy, as PG&E implies, for MCE to be keenly interested in a proposal by PG&E to upend decades of PCIA

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6 PG&E Opening Brief at 17-18.

7 PG&E Opening Brief at 18.

8 *See* discussion below, Section I.D., describing the DA parties' arguments in the other IOUs' ERRA proceedings.

precedent. As such, PG&E's plea that the Commission ascribe special, extraordinary importance to the DA parties' role in this proceeding should be disregarded.

### C. PG&E's Arguments Regarding D.08-09-012 Are Unavailing And Incomplete

In its testimony, PG&E completely ignores D.08-09-012, never even mentioning the decision. In its opening brief, because of MCE's extensive reliance on D.08-09-012 in its protest, PG&E feels compelled to at least mention the decision, dedicating a mere paragraph to show why "MCE's reliance on D.08-09-012 is misplaced."[9] PG&E offers one retort to MCE's arguments. As it has wrongly done for years,[10] PG&E claims that there are *two* PCIAs, instead of one PCIA. Conveniently packaged in two boxes, PG&E attempts to dispose of the one box by concluding "[t]hus, D.08-09-012 is not applicable to the DWR PCIA."[11] The problem with PG&E's argument is that it completely ignores the Commission's repeated denouncement of this view. This is a pattern and a problem. In sum, PG&E continues to have a mistaken belief that it is permissible to bifurcate the PCIA into two separate portfolios, instead of a single, total portfolio.

As a preliminary matter, it is important for the Commission to see how often, and seemingly insolently, PG&E has brought forward PCIA proposals that have the effect of calculating certain PCIA costs *separately* instead of on a *total portfolio* basis. Repeatedly, the Commission has stated that "[t]he *total portfolio* approach is consistent with [bundled customer

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9 PG&E Opening Brief at 19.

10 *See* MCE Opening Brief at 10-12.

11 PG&E Opening Brief at 19. The one box that PG&E wishes to dispose of is, unsurprisingly, the *negative* indifference amount.

indifference] principle. PG&E's separate approach is not."[12] PG&E's proposal in this proceeding is no different, and the outcome should be no different.

More specifically with respect to D.08-09-012, MCE has previously provided a comprehensive discussion as to why PG&E's bifurcated PCIA approach has been rejected.[13] MCE will not restate its position, but rather MCE will let another voice speak to the relevance of D.08-09-012 and the abiding effect of a single, total portfolio approach. In its opening brief on ERRA-related matters, San Diego Gas & Electric Company ("SDG&E") addresses this issue head-on.[14] In general, SDG&E retraces PCIA history to show the Commission's intent that, "[b]y incorporating these categories of costs [both DWR and IOU procurement costs], the [Cost Responsibility Surcharge ("CRS")] would be determined on a 'total portfolio basis'…."[15] SDG&E then methodically walks through subsequent Commission decisions to show how the Commission has been steadfast in its insistence on a *total* portfolio approach.[16]

With respect to D.08-09-012, in particular, SDG&E has a vastly different view than PG&E. Instead of relegating D.08-09-012, as PG&E does, SDG&E affirms the relevance and controlling nature of D.08-09-012. SDG&E observes that "[i]n [D.08-09-012], the Commission found that new generation non-bypassable charges authorized in D.04-12-048 should be

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12 D.11-12-018 at 40 (emphasis added). *See generally* D.11-12-018 at 39-40.

13 *See* MCE Opening Brief at 11.

14 *See* SDG&E Opening Brief in A.16-04-018, dated October 3, 2016. As MCE previously stated, the Commission may, pursuant to Rule 13.9 and Evid. Code § 452(d), take official notice of the existence of pleadings in other Commission proceedings. *See* MCE Opening Brief at 18; note 54 (referencing D.16-01-014 at 20).

15 SDG&E Opening Brief at 3 (referencing D.02-11-022 [the Commission's first substantive CRS decision] at 3-4, 24-27).

16 *See* SDG&E Opening Brief at 3-6 (addressing D.05-01-040, D.06-07-030, and D.08-09-012).

implemented as a component of the CRS and maintained the *total portfolio* approach it had adopted in D.06-07-030."[17] More directly, SDG&E challenges the *mistaken* view "that D.08-09-012 only applies to post-2009 vintages," stating that "if the Commission had overturned its longstanding precedent from D.02-11-022 through D.06-07-030 in D.07-05-005 on such a fundamental issue, surely they would have referenced that conclusion in D.08-09-012."[18] In sum, as MCE and SDG&E have found, any genuine and serious analysis of D.08-09-012 (and other Commission decisions) will inevitably lead to the conclusion that the Commission's total portfolio approach, with carry-forward of negative indifference amount balances, must be maintained after the expiration of DWR contracts.

### D. PG&E Stands Alone Among The IOUs (Again) In Its View Regarding The Relevance Of Expiring DWR Contracts

As stated above, SDG&E takes a completely different view than PG&E on the relevance of expiring DWR contracts with respect to the question of whether the PCIA should be eliminated (as PG&E has prematurely and impermissibly done) and whether the negative indifference amount balance should be eliminated.[19] The other IOU, Southern California Edison Company ("SCE"), takes a similar view to SDG&E.[20] Like SDG&E, SCE retraces Commission precedent in showing the ongoing relevance of the "'total portfolio indifference standard' for computing bundled service customer indifference that measured the above- or below-market cost of the *entire* generation portfolio (*i.e.,* not just the above- or below-market costs of specific

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17 SDG&E Opening Brief at 5 (emphasis added).

18 SDG&E Opening Brief at 9-10.

19 As discussed in MCE's Opening Brief, PG&E revealed in cross-examination that it had eliminated the negative PCIA without any express authorization by the Commission. *See* MCE Opening Brief at 17-20.

20 *See* SCE Opening Brief in A.16-05-001, dated October 3, 2016.

generation assets) to set the [CRS/PCIA]."[21] Importantly, SCE issues a persuasive response to PG&E's mistaken belief that D.07-07-005 is relevant in determining whether the PCIA and negative indifference amount should be eliminated.

D.07-07-005 is the centerpiece (actually, the entirety) of PG&E's legal defense of its proposal to eliminate the PCIA and negative indifference amount.[22] PG&E claims that "[i]n D.07-05-005, the Commission elaborated on when it was appropriate to [eliminate] the negative indifference amount [and the PCIA]" concluding that "PG&E's request is reasonable and entirely consistent with D.07-07-005."[23] The problem with PG&E's claim, as aptly stated by SCE, is that "reliance on D.07-05-005 is misplaced in light of other Commission decisions and the broader indifference principle."[24] SCE further sharpens this point by stating as follows, all of which equally applies as a criticism of PG&E's misplaced reliance on D.07-05-005:

> Citing no good policy reason why the Commission should reverse those underlying concepts and precedents upholding the indifference principle, the DA Parties instead resort to reliance on a few sentences from D.07-05-005. The DA Parties' citations to the three sentences in D.07-05-005 are technically accurate, but also essentially meaningless without appropriate context. In D.07-05-005, the Commission was addressing a very limited issue: whether negative indifference amounts from below-market [utility-owned generation ("UOG") should "carry-over" for Municipal Departing Load customers once the above-market DWR contracts expired. In that case, the Commission answered the question "no."
>
> But the context is what matters: At that point, the utilities' UOG portfolio was below market, and the Commission decided that as a matter of policy, departing load customers should not continue to benefit from the below-market position of those resources once those customers were no longer paying above-market DWR contract costs. That decision should not be interpreted as a Commission broad policy determination that DA customers' responsibility for UOG resources—should they ever be above market—should end once the DWR contracts expired.

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21 SCE Opening Brief at 4 (emphasis in the original).

22 *See* PG&E Opening Brief at 18-20.

23 PG&E Opening Brief at 18-19.

24 SCE Opening Brief at 3.

In fact, even D.07-05-005 itself affirms the broader indifference principle when it states that "the requirement to maintain bundled customer indifference did not end on June 30, 2006 merely because PG&E's CRS undercollection at that point was deemed to be zero." Similarly, the requirement to maintain SCE's bundled service customers' indifference should not end on September 30, 2011, merely because the last of SCE's DWR contracts expired on that day.[25]

## II. CONCLUSION

MCE thanks the Commission for its attention to the matters addressed herein.

Respectfully submitted,

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[25] SCE Opening Brief at 5 (internal citations omitted).